

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

IN THE MATTER OF
THE APPLICATION OF
THE UNITED STATES OF AMERICA
FOR AN ORDER DIRECTING
A PROVIDER OF ELECTRONIC
COMMUNICATIONS SERVICE
TO DISCLOSE RECORDS
TO THE GOVERNMENT

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No. 08-4227

**MOTION FOR EXTENSION
OF TIME TO FILE APPELLANT'S BRIEF**

AND NOW comes the United States of America, by Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Robert L. Eberhardt, Assistant United States Attorney, and respectfully requests an extension of time of 31 days or until January 30, 2009, to file the brief for appellant in this matter for the following reasons:

1. The brief of the Appellant United States is currently due to be filed with this Court on or before December 30, 2008.
2. This appeal raises an issue of first impression for this Court involving whether the Government is entitled to obtain historical cell-site records of a cell phone subscriber under 18 U.S.C. 2703(d) based on a showing of "specific and articulable facts."
3. As chief of appeals in the U.S. Attorney's Office, the undersigned counsel for the government is currently involved in reviewing several briefs prepared by other counsel in the office for filing with this Court during the last two weeks of December, 2008.

4. The undersigned counsel is also personally preparing the Appellee's brief in United States v. James C. Platts, No. 08-2911, currently due on December 23, 2008 and the Appellee's brief in Darryl Baker v. United States of America, et al., No. 08-2288, for which an extension of time until January 9, 2009 is pending before the Court.

5. As Executive Assistant U.S. Attorney, the undersigned is also responsible for a number of additional administrative and litigation matters in the appellate, criminal and civil divisions, including on-going staff ethics training.

6. The undersigned has pre-planned leave to be with his family during the period of December 24, 2008 through January 2, 2009.

7. Accordingly, in order to allow the Government sufficient time within which to provide a full and through brief, the Government requests that the Court grant an extension of time from December 30, 2008 until January 30, 2009, to file the brief and Appendix for Appellant in this appeal.

8. The Government does not seek this extension of time for purposes of delay and will make every effort to file its brief before January 30, 2009.

9. Although there is no opposing party who is an appellee in this appeal, three amici filed briefs in opposition to the Government's position in the district court and these amici have indicated to the undersigned counsel for the Government that the amici wish to file briefs in this Court in opposition to the Government's position on the issue presented by the Government's appeal.

10. The undersigned has advised counsel for the amici that the Government has no objection to the Court granting these three amici a period of thirty (30) days following the filing of the Government's opening brief for Appellant to file brief(s) for those three amici in this appeal as part of any Order filed in response to the Government's request for additional time to file its brief.

WHEREFORE, pursuant to Third Circuit Local Rule 31.4, counsel for the United States respectfully requests an extension from December 30, 2008 until January 30, 2009, by which to file its brief.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

/s/Robert L. Eberhardt
Robert L. Eberhardt
Assistant United States Attorney

DATED: December 22, 2008